

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRENT DAVIS,

No. C 08-3056 WHA (PR)

Petitioner,

ORDER TO SHOW CAUSE

v.

MIKE MARTEL, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at Mule Creek State Prison, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

Venue is proper because the conviction was obtained in San Mateo County, which is in this district. *See* 28 U.S.C. § 2241(d).

STATEMENT

A San Mateo jury convicted defendant of attempted murder, assault with intent to commit forcible oral copulation, attempted forcible oral copulation, three counts of assault with a deadly weapon, and false imprisonment. The jury also found that he personally used a deadly weapon. The trial court subsequently found that defendant had suffered prior convictions and had served a prior prison term. He was sentenced to an aggregate term of twenty-seven years in state prison. On appeal, the California Court of Appeal affirmed except as to a sentence enhancement; it was ordered stricken rather than stayed, so the reversal as to that point had no

1 effect on the sentence. The Supreme Court of California denied his petition for review.

2 DISCUSSION

3 A. STANDARD OF REVIEW

4 This court may entertain a petition for writ of habeas corpus "in behalf of a person in
5 custody pursuant to the judgment of a State court only on the ground that he is in custody in
6 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose*
7 *v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading
8 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ
9 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state
10 court must "specify all the grounds for relief which are available to the petitioner ... and shall
11 set forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of
12 the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. "[N]otice' pleading is not
13 sufficient, for the petition is expected to state facts that point to a 'real possibility of
14 constitutional error.'" Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d
15 688, 689 (1st Cir. 1970). "Habeas petitions which appear on their face to be legally insufficient
16 are subject to summary dismissal." *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d
17 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

18 B. LEGAL CLAIMS

19 As grounds for federal habeas relief, petitioner asserts that: (1) his due process rights
20 were violated by the trial court's admission of evidence of prior bad acts; (2) his Sixth and
21 Fourteenth Amendment rights were violated by the trial court's refusal to allow certain
22 impeachment; (3) the imposition of the upper term at sentencing based on facts not found by the
23 jury violated his due process rights.

24 These claims are sufficient to require a response.

25 CONCLUSION

26 1. The clerk shall mail a copy of this order and the petition with all attachments to the
27 respondent and the respondent's attorney, the Attorney General of the State of California. The
28 clerk shall also serve a copy of this order on the petitioner.

2. Respondent shall file with the court and serve on petitioner, within sixty days of service of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

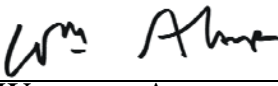
If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within thirty days of service of the answer.

3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court and serve on respondent an opposition or statement of non-opposition within thirty days of receipt of the motion, and respondent shall file with the court and serve on petitioner a reply within 15 days of receipt of any opposition. If a motion is filed it will be ruled upon without oral argument, unless otherwise ordered.

4. Petitioner is reminded that all communications with the court must be served on respondent by mailing a copy of the document to respondent's counsel. Papers intended to be filed in this case should be addressed to the clerk rather than to the undersigned. Petitioner also must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and comply with any orders of the court within the time allowed, or ask for an extension of that time. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

IT IS SO ORDERED.

Dated: August 1, 2008.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

TRENT DAVIS,

Plaintiff,

v.

MIKE MARTEL et al,

Defendant.

Case Number: CV08-03056 WHA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 1, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Trent Davis
MCSP
P11141
P.O. Box 409060
Ione, CA 95640

Attorney General's Office
455 Golden Gate Ave
San Francisco, CA 94102

Dated: August 1, 2008

Richard W. Wieking, Clerk
By: D. Toland, Deputy Clerk